Legal Problems of Patents, Industrial Designs, Technical Data, Trademarks and Copyrights in Soviet-American Trade

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I. INTRODUCTION

Soviet-American trade in the area of industrial and intellectual property operates under the legal framework of the Paris Convention for the Protection of Industrial Property[1] and the Universal Copyright Convention.[2] These conventions generally provide for application of a national treatment standard, but in certain instances provide for a minimum international standard of protection. Legal and commercial relations in the area of patents, trademarks and technical data have enjoyed a steady and satisfactory growth since Soviet accession to the Paris Convention. It is to be hoped that Soviet accession to the Universal Copyright Convention will mark the beginning of a similar stage of development of healthy copyright relations.

Nevertheless, because of the differences between the economic and legal systems of the Soviet Union and the United States, a number of actual and potential problems remain which could hinder the full development of trade relations. This paper will concentrate on these problems on the assumption that the audience for which it is intended is familiar with the general legal principles of American, Soviet and international law in the area under discussion, as explicated in the extensive and excellent literature on the subject.

This paper deals with the law of patents, industrial designs, technical data, trademarks and copyrights. Because the legal principles and practical problems in each of these areas are quite different, each area will be treated separately in the discussion which follows.

II. PATENTS

Soviet-American patent relations operate within the general framework of the Paris Convention for the Protection of Industrial Property which guarantees national treatment and certain grace periods to foreign patent applicants.[3]

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1. Paris Convention for the Protection of Industrial Property, *done* June 14, 1967, 21 U.S.T. 1583, T.I.A.S. No. 6923.

2. Universal Copyright Convention, *done* Sept. 6, 1952, 6 U.S.T. 273, T.I.A.S. No. 3324, 216 U.N.T.S. 132.

3. Maggs & Jerz, *The Significance of Soviet Accession to the Paris Convention for the Protection of Industrial Property*, 48 J. PAT. OFF. SOC'Y 242 (1966).

The basic problems of Soviet-American patent relations are the high costs of obtaining patents and negotiating licenses. These high costs have meant that only a relatively small fraction of the inventions developed in one country are patented and licensed in the other.[4] These high costs are to a large extent the result of problems of a legal nature. These problems include duplication of effort in patent searching, failure of Americans to apply for inventor's certificates, and incompatibility of American and Soviet approaches to patent licensing. Each of these problems will be discussed in turn.

It is expensive to obtain and maintain either a Soviet or a United States patent. Soviet government charges for the issuance of a patent and for maintaining it in force are substantial.[5] Legal fees involved in the issuance of an American patent are always substantial and may become astronomical if the validity of the patent becomes involved in litigation.[6] Such costs are inevitable in a system based upon novelty. It is in fact expensive to search the immense body of world technical literature and to evaluate the novelty of an invention, and this cost must be borne by someone. What is not inevitable is that the search for a given invention should be duplicated in the Soviet Union and the United States, or that a major portion of the costs of the search should be borne by the owners of the inventions involved.

The best hope for the avoidance of duplication of searches would be rapid development for means of sharing search labor and search results between the patent offices involved along the lines of the Patent Cooperation Treaty,[7] by bilateral arrangement between the respective patent offices, or by cooperation similar to that envisioned for the Council for Mutual Economic Assistance (CMEA).[8] Hopefully

4. In 1970, for example, U.S. nationals or residents filed 76,195 applications for patents in the United States but only 512 applications for patents and 2 for inventor's certificates in the Soviet Union. In 1970, Soviet nationals or residents filed 110,501 applications for inventor's certificates and 7 applications for patents in the Soviet Union but only 403 applications for United States patents. 10 INDUSTRIAL PROPERTY Annex (1971).

5. The fees for obtaining a Soviet patent and maintaining it in force for fifteen years would come to over $2,000. Decree of the Council of Ministers of the U.S.S.R. of October 27, 1967, No. 983, Fees for Patenting Inventions and Industrial Designs and Registering Trademarks, [1967] 26 SOBRANIE POSTANOVLENII PRAVITEL'STVA SOIUZA SOVETSKIKH SOTSIALISTICHESKIKH RESPUBLIK (COLLECTED DECREES OF THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS) [hereinafter cited as S.P.-S.S.S.R.] Item 184; [1968] 2 VOP. IZOB. 52.

6. In addition to the patent office charges which may typically amount to $300 (for details of the fee schedule, see 35 U.S.C. § 41 (1965)), lawyers' fees for prosecution of a patent application typically amount to hundreds of dollars. If interference proceedings develop, lawyers' and expert witnesses' fees may amount to many thousands of dollars.

7. 9 INDUSTRIAL PROPERTY 259 (1970).

8. Dorkin, *Problemy integratsii pravovoi okhrany izobretenii v ramkakh SEV*

some of the savings could be passed on in the form of reduced fees to the owners of the inventions involved as an incentive to the development of patent relations. It would be interesting to have Soviet thoughts on the most appropriate means of cooperation in patent searching.

Both the American and Soviet governments regard their systems for the encouragement and protection of inventions as being in the public interest; both subsidize the operation of this system. Unfortunately, owners of American inventions have generally failed to take advantage of the main type of Soviet subsidy for the protection of inventions, namely the inventor's certificate, which is issued without the high fees charged for Soviet patents.[9] This failure may be explained partly by some of the limitations upon the incentives offered by the inventor's certificate, but would also appear to result from doubts of American patent attorneys as to the legal effects of inventor's certificates.

The first problem is connected with the fact that many of the privileges offered by the inventor's certificates cannot realistically be enjoyed by foreign owners of such certificates. These include such privileges as better housing and better working conditions which may be extremely effective as incentives for invention within the U.S.S.R., but cannot meaningfully be offered to foreign inventors.

The second problem is connected with the exact legal effect of the inventor's certificate. Many American patent attorneys are uncertain as to the amount and convertibility of compensation which might be paid for a typical American invention. More seriously, the attorneys are unsure as to the exact nature of the rights conferred upon the Soviet state by the acceptance of an inventor's certificate. Clearly the state receives a royalty-free license to practice the invention within its boundaries. Does it also receive the right to exclude products produced outside the Soviet Union under license of the original inventor? Does it receive the right to export the invention to other countries where the inventor has a patent? Clarification of the answers to these questions could lead to the development of sizeable American participation in what is the main form of encouragement of inventions in the Soviet Union.

Differences in patent licensing practices present problems for the owner of an American invention seeking to sell it in the Soviet Union. Of course if he elected to receive an inventor's certificate, there would

(Problems of the Integration of Legal Protection of Inventors within the Framework of the Council for Mutual Economic Assistance), [1973] 5 VOP. IZOB. 3.

9. Lightman, *Inventors' Certificates and Industrial Property Rights*, 11 IDEA 133 (1967). For statistics see note 4, *supra*.

be no licensing problems, since such a certificate involves the issuance of a general license for the Soviet Union in return for a fair payment as computed by Soviet authorities. However, for reasons already mentioned, the owner of the American invention will almost certainly seek a Soviet patent rather than an inventor's certificate. Difficulties then arise because of the American practice of negotiating individual licenses with individual users as compared to the Soviet practice of centralizing license negotiations in a foreign trade organization in Moscow. If the Soviet proposals tend to involve the issuance of a general license for the whole country as a starting point, they tend to take the nature of a major international, political and economic negotiation rather than those of a simple commercial deal. The result is a sharp escalation of the costs of negotiating which may discourage the American owner of an invention from seeking to sell it in the Soviet Union. It would appear that American owners of inventions would be particularly interested in possibilities which might be developed by the most recent Soviet economic reforms, which grant powers to Soviet production associations to negotiate patent licenses directly with American firms, or at least to participate informally in license negotiations.

III. INDUSTRIAL DESIGNS

Legal relations in the area of protection of industrial designs between the United States and the Soviet Union are almost nonexistent. Statistics for 1971 show 2 American applications in the Soviet Union and 2 such applications granted; 10 Soviet applications in the United States and 1 such application granted.[10] These statistics may be somewhat misleading on the American side, for they do not reflect the protection of industrial designs through trademark or copyright law in the United States. (Such protection has become a common practice because American courts frequently hold contested design patents invalid for want of novelty.)

Since the protection of designs in American law is likely to continue to remain weak, there probably will be few incentives for the Soviet Union to expand its applications in this area.

IV. TECHNICAL DATA

The exchange of technical data is one of the fastest growing and most promising areas of Soviet-American trade. However, this growth is hampered by the cumbersome United States technical data export controls and by American doubts as to the protection offered by Soviet law to various forms of technical data.

The discussion below focuses upon questions that potential

10. 10 INDUSTRIAL PROPERTY Annex (1971).

American exporters of technical data might have with respect to Soviet law.

Again this is an area of great difference between Soviet and American law. Under Soviet law, Soviet enterprises are expected to cooperate with one another in the sharing of technical data for the good of the economy as a whole. Under American law on the other hand, competition is seen as the key to the health of the economy, and the legal protection of technical data in the form of trade secrets serves to encourage competition in the production of new technology.[11] The American exporter is naturally worried as to the extent to which a contract under which the Soviet licensee is to maintain the secrecy of technical data will be enforceable under Soviet law. An important related question is raised by the most recent Soviet economic reforms, namely the question of the legality of a contract to license the use of technical data to a single Soviet production association with the understanding that such data will not be released to other Soviet production associations.

A question of particular interest to the author of the present paper, but also one which should be of growing economic importance, is that of the form of legal protection to be granted to computer programs and to data in machine-readable form. This question is far from completely resolved in American law.[12] An extensive search has disclosed only limited discussion of the problem in writings by Soviet authors.[13] Yet it seems inevitable that within the next few years data and programs for computers will become one of the largest items in the American gross national product and in American exports and imports. Trade in such materials, however, can flourish only upon a clear and adequate legal basis.

V. TRADEMARKS AND SERVICE MARKS

Registration of American trademarks in the Soviet Union has been growing at a rapid rate, while registration of Soviet trademarks

11. The recent case of Kewanee Oil Company v. Bicron, 416 U.S. 470 (1974), has affirmed the legality of contracts for the protection of trade secrets under U.S. law.

12. A recent United States Supreme Court decision, Gottschalk v. Benson, 409 U.S. 63 (1972), was interpreted by some to mean that patents should not be granted on computer programs. However, the U.S. Court of Customs and Patent Appeals has interpreted the case quite narrowly, and has continued to protect programs by allowing patent claims on programmed computers. *In re* Knowlton, 178 U.S.P.Q. 486 (C.C.P.A. 1973); *In re* Comstock v. Gilmer, 178 U.S.P.Q. 616 (C.C.P.A. 1973). The Register of Copyrights will accept computer programs for copyright registration. It should be noted, however, that the protection provided by a copyright on a computer program is douhtful and in any event limited. Note, *New Technology and the Law of Copyright: Reprography and Computers*, 15 U.C.L.A. L. REV. 931 (1968).

13. Mamiofa, *Ob okhranosposobnosti matematicheskikh reshenii tekhnicheskikh zadach (On the Protectability of Mathematical Solutions to Technical Problems)*, [1973] 5 VOP. IZOB. 21.

in the United States has been proceeding more slowly.[14] This difference may be partially explained by the fact that the Soviet Union, like many other countries, follows a system where registration of the trademark precedes its use,[15] while the United States follows a system where use must precede registration.[16]

Despite the relative simplicity of the trademark registration process as compared to the patent application process, the vast majority of United States trademarks are not registered in the Soviet Union and the vast majority of Soviet trademarks are not registered in the United States. The main reason for this situation is the high cumulative cost of country-by-country, worldwide trademark registration. Perhaps this situation can be remedied if the Soviet Union and the United States, along with other nations, choose to accept the Trademark Cooperation Treaty recently drafted under the auspices of the World Intellectual Property Organization.[17]

For the American manufacturer, registration in the Soviet Union is a simple and wise precaution. However, as every lawyer knows, no business always takes the simplest and wisest course. If an American firm has failed to register its trademark promptly in the Soviet Union, by the time it wishes to register its trademark and sell its products in the Soviet Union or to display them at an international fair in the Soviet Union, it may find that another person, a competitor, or a frivolous applicant has already filed an identical trademark in the Soviet registry. In such a situation, the Soviet Union has the obligation under Article 6 bis of the Paris Convention for the Protection of Industrial Property to allow the cancellation of such a competing mark within five years at the request of the owner of a "well known" mark. It is unclear to this author, however, exactly how this obligation is implemented in Soviet law.

The greatest value of a trademark is in advertising and competi-

14. In 1970, for instance, U.S. applications in the United States totaled 30,273, while U.S. applications in the U.S.S.R. totaled 164. Soviet applications in the U.S.S.R. totaled 1715, while Soviet applications in the United States totaled 0. 10 INDUSTRIAL PROPERTY Annex (1971).

15. Boguslavskii, *Legal Protection of Trademarks in the U.S.S.R.*, 52 J. PAT. OFF. SOC'Y 44 (1970); Kekalo, *Sovetskoe zakonodatelstvo o tovarnykh znakov (Soviet Legislation on Trademarks)*, [1972] 2 VOP. IZOB. 7; Decree of the Council of Ministers of the U.S.S.R. of May 15, 1962, No. 442 on Trademarks, [1962] 7 S.P.-S.S.S.R. Item 59; Statute on Trademarks, adopted by the Committee on Matters of Inventions and Discoveries Attached to the Council of Ministers of the U.S.S.R. of June 23, 1962, NORMATIVNYE MATERIALY PO SOVETSKOMU GRAZHDANSKOMU PRAVU (NORMATIVE MATERIALS ON SOVIET CIVIL LAW) 49 (1965).

16. J.T. MCCARTHY, TRADEMARKS AND UNFAIR COMPETITION (1973); Shatrov, *Pravovaia okhrana tovarnykh znakov v S.Sh.A. (Legal Protection of Trademarks in the U.S.A.)*, [1973] 6 VOP. IZOB. 27.

17. 12 INDUSTRIAL PROPERTY 215 (1973).

tion. In the Soviet Union, such value can be realized only if the trademark can be licensed to a single enterprise that is competing with other enterprises. To the foreign observer, it appears that in those areas where consumer goods are now plentiful in the Soviet Union (black and white television sets, clothing, etc.) there is a growing amount of competition among Soviet manufacturers to satisfy customer tastes. Could American manufacturers realistically expect to license their trademark to one of the competing manufacturers in such a consumer goods industry?

VI. COPYRIGHT

The recent decision by the Soviet Union to accede to the Universal Copyright Convention[18] raises a substantial number of legal questions concerning the future development of Soviet-American copyright relations. Unlike the other areas discussed in this paper, where trade has already developed to the point where important legal problems can be distinguished from trivial ones, the absence of prior experience in the legal area makes it difficult to distinguish those legal problems which will be of practical importance from those of a purely theoretical nature. Therefore, the discussion must necessarily be of a broader and more speculative nature.

Questions involve the nature of materials subject to copyright protection, the setting of scales of royalties, and the so-called moral rights of the author to control the content of publication or to prevent it entirely. Some of the problems are purely of an economic nature; others, however, by the nature of the literary subject matter, inevitably involve the political and ideological differences between the United States and the Soviet Union.

The publishing industries in the United States and the Soviet Union operate on different bases. In the Soviet Union publishers evaluate works largely by social and political criteria, while in the United States private publishers evaluate works largely by economic criteria. In addition, the United States government and private foundations support a substantial quantity of publication of materials which are deemed socially important but whose private publication would be economically unfeasible.

In addition to acceding to the Universal Copyright Convention, the Soviet Union has adopted new copyright legislation.[19] New legis-

18. Boguslavskii, *Novoe v sovetskom avtorskom prave (New Developments in Soviet Copyright Law)*, [1973] 7 SOV. GOS. PR. 56; J. BAUMGARTEN, U.S.-U.S.S.R. COPYRIGHT RELATIONS UNDER THE UNIVERSAL COPYRIGHT CONVENTION (1973). For a fuller treatment of the problems created by the Soviet Union's accession to the Universal Copyright Convention see: Maggs, *New Directions in U.S.-U.S.S.R. Copyright Relations*, 68 AM. J. INT'L L. 391 (1974).

19. [1973] 9(1667) Ved. Verkh. Sov. S.S.S.R. 131.

lation has been introduced in the United States Senate to counteract what some Americans see as a possible abuse of American copyrights by the Soviet government.[20] The effect of these developments may be analyzed by noting how, item by item, each of the types of American materials that has been published in recent years in the Soviet Union and each of the types of Soviet materials that has been published in recent years in the United States would be affected.

First consider the publication of American works in the U.S.S.R. These have included translations of scientific textbooks and scholarly articles, reproductions of American technical journals, translations and some English language editions of leading modern and classic American writers of novels and short stories, and translations of works of some American writers (e.g., victims of McCarthyism) who for political reasons had difficulty in finding markets for their works in the United States.

Publication of translations of American works in the Soviet Union will be governed by Article V of the Universal Copyright Convention which provides that for the first seven years after publication of the original, translations may not be made without the authorization of the author. Thereafter, if no authorized translation has been published, parties to the convention may allow publication of unauthorized translations with just compensation to the copyright owner. Soviet legislation, namely Articles 101 and 102 of the Fundamentals of Civil Legislation, has been revised to conform with Article V of the Universal Copyright Convention. An important exception, however, which would affect the publication of translations of American works is incorporated in paragraph 5 of the revised Article 103 of the Soviet Fundamentals of Civil Legislation. This allows newspapers to reproduce copyrighted materials in translation without permission or payment. There is inevitably a conflict between the need to publish news rapidly and the time-consuming process of obtaining copyright clearance. The Soviet resolution of this conflict in favor of the newspapers should create no problem provided the newspapers limit themselves to reasonable use of newsworthy copyrighted items. If, however, Soviet newspapers were to begin to reproduce entire short stories or serialized novels, serious questions would arise both under the provisions of Article 5 of the Fundamentals of Civil Law of the U.S.S.R. and the Union Republics concerning abuse of rights and Article I of the Universal Copyright Convention which obliges contracting states to provide adequate and effective copyright protection.

Somewhat different problems are presented by the publication of English language editions of American works of fiction and the

20. S. 1359, 93d Cong., 1st Sess. (1973).

reproduction of American technical periodicals for use by Soviet libraries. Because the knowledge of English in the Soviet Union, particularly among the scientific intelligentsia, is much more widespread than knowledge of the languages of the peoples of the U.S.S.R. in the United States, there is a substantial demand for both literary and scientific works in English. Publication of American works in English, under revised Article 97 of the Fundamentals of Civil Legislation would require in general the consent of the copyright owner.

An exception of uncertain scope is created by paragraph 7 of revised Article 103 of the Fundamentals of Civil Legislation which allows reproduction of printed works for non-profit scientific and educational purposes without the permission of or payment to the copyright owner. This exception led some to raise serious questions in view of the Soviet practice of entering only a limited number of subscriptions to many American scientific and technical journals and then reproducing a substantial number of additional copies for distribution to libraries, educational institutions and research institutes. However, this practice apparently has been discontinued. The seriousness with which American publishers regard the issue of xerographic copying is reflected by their support of the current suit by the Williams & Wilkins Company against the United States in which the company complained that wholesale xerographic copying of articles from its journals by the United States government was a serious violation of its copyrights.[21]

American publishers have published extensive translations of Soviet scientific and scholarly books and articles, including regular cover-to-cover translations of many Soviet journals and regular translations from the Soviet press. They have published translations of novels and stories by leading writers of Imperial Russia and the Soviet Union. They have also published in both Russian and English some works by Soviet authors which were unacceptable for publication in the U.S.S.R.

Clearly, it will now in general be necessary for publishers of translations of Soviet works to obtain the permission of the copyright owner. Hopefully, this will not involve great problems. Some of the American publishers of translations of Soviet journals already have agreements with *Mezhdunarodnaia kniga*, a Soviet foreign trade organization, which allow them to obtain advance copies of the texts of the Russian journals and glossy photos of illustrations. These agreements could be renegotiated to include the necessary copyright permission. Negotiations should be relatively simple, since no political problems are involved in the cover-to-cover translation of scientific journals.

21. Williams & Wilkins v. United States, 180 U.S.P.Q. 49 (Ct. Cl. 1973).

More serious problems are posed by the publication of works by those who in the past have not sought Soviet cooperation. In most such cases the permission of the copyright owner will be necessary. While the current Soviet policy as to what materials will be protected by a copyright notice has been clearly stated,[22] it remains unclear what terms will be demanded by agencies representing Soviet copyright holders.

The new Soviet legislation has provoked a substantial reaction in the United States, based upon fear that the same criteria now used by Soviet publishers in determining what is to be published in the U.S.S.R. would be used in an attempt to control the political content of works by Soviet authors published outside the U.S.S.R.

Two possible situations may be considered. First is the situation of a journal such as the *Current Digest of the Soviet Press* which reproduces selections from Soviet newspapers and periodicals. If one compares the contents of the *Current Digest* with the contents of the Soviet newspapers and periodicals from which it draws its materials, it quickly becomes obvious that the *Current Digest* selects a much higher proportion of negative and critical articles for translation than it selects positive and laudatory articles. The editors of such a translation journal must naturally be wondering whether the Soviet government will change its present policy of not placing copyright notices on newspapers, and if so, whether the Soviet copyright proprietors will enforce their copyright in such a manner as to require the translation journal to change its selection policy or go out of business.

Even more serious problems of a political nature are faced by American publishers of works unacceptable for publication in the U.S.S.R. The extensive press discussion of their position[23] has raised

22. Instruktsiia o poriadke primeneniia znaka okhrana avtorskogo prava na proizvedeniiakh literatury, nauki i iskusstva, izdavaemykh v S.S.S.R. (Instructions on the Procedure for the Use of the Copyright Protection Symbol on Productions of Literature, Science and Art Published in the U.S.S.R.), approved by Order No. 153 of the Chairman of the State Committee on Matters of Publishing Houses, Printing and the Book Trade of March 28, 1973, [1973] 7 BIUL. NORM. MIN. VED. AKT. S.S.S.R. 44.

23. Astrachan, *Concern Voiced in U.S. at Soviet Copyright Law*, Washington Post, Mar. 23, 1973, at A14, col. 1; Astrachan, *Soviets Join Copyright System*, Washington Post, Mar. 1, 1973, at H1, col. 5; Wagner, *Authors, Publishers Deplore Soviet Moves to Curb Dissident Writers by Copyright Laws*, Publishers Weekly, Mar. 26, 1973, at 47, col. 1; Bethell, *Authors' Rights, or Authors Wronged?* The Times (London), Mar. 2, 1973, at 14, col. 1; *Moscow Amends Law on Copyright: Outflow of Dissident Writing is Apparent Target*, N.Y. Times, Mar. 18, 1973, at 5, col. 1; *A Moscow Move to Restrict Publication*, Wall Street Journal, Mar. 16, 1973, at 1, col. 3; *Reverse Copyright*, N.Y. Times, Mar. 21, 1973 at 44, col. 1; Wagner, *Russians and Copyright — A Welcome Move, But a Host of Questions Remain*, Publishers Weekly, Mar. 12, 1973, at 32, col. 1; Saxon, *U.S. Authors Ask a Bar to Soviet: Seek to Block Copyright Actions in U.S. Courts*, N.Y. Times, Mar. 25, 1975, at 17, col. 1; Shabad, *Soviet*

the following questions. Will the procedures to be established under Article 98 of the Fundamentals of Civil Procedure grant authors of such works the civil law capacity to give permission for their publication abroad? If allowed to give such permission, will the authors be reluctant to do so for fear of prosecution for anti-Soviet propaganda activities, expulsion from the Authors' Union or other sanctions? Will the Soviet government exercise its right of compulsory purchase under Article 106 of the Fundamentals of Civil Procedure and then refuse permission for the publication or translation of the work in the United States? Will American courts recognize permission given by Soviet authors in violation of Soviet law?[24]

A bill introduced into the United States Senate attempts to nullify the effects of the Soviet copyright legislation to the extent that it would allow the Soviet government to divest any Soviet author of his copyright or of the right to secure it.[25]

Finally, it would seem appropriate to close with a problem of particular interest to a number of the American participants at the conference. This is the question of publication of translations of Soviet legal materials. Materials commonly translated include excerpts from scholarly works, judicial opinions, laws and administrative regulations. The first question is the extent to which such works will be protected by the inclusion of the copyright notice in the form permitted by the Universal Copyright Convention. The second question is the extent to which such works are subject to copyright protection under American law. Clearly the answer to the first question is wholly within the discretion of the appropriate Soviet authorities. If a copyright notice is present, clearly Soviet scholarly works on legal subjects are protected by copyright.

However, it is highly doubtful that official legal materials would be subject to copyright protection under American law, even if the Soviet Union were to change its policy of not putting copyright notices on such material. It has been consistently held by American courts that neither federal nor state official legal materials such as court opinions, legislation, etc., are subject to copyright protection. Applying the basic principle of national treatment, it would appear

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Royalties for U.S. Authors, N.Y. Times, Mar. 25, 1973, at 29, col. 4; Smith, *6 Soviet Intellectuals Warn of Danger in Moscow's Acceptance of World Copyright Law*, N.Y. Times, Mar. 28, 1973, at 15, col. 2; Gamson, *Moscow's Copyright Maneuver*, 56 NEW LEADER 11 (May 14, 1973); Gruliow, *Soviet Copyright Loopholes Eyed*, Christian Science Monitor, Mar. 21, 1973, at 7, col. 1; Gruliow, *Soviets Ready Participation in World Copyright*, Christian Science Monitor, Mar. 12, 1973, at 5, col. 2.

24. See dicta in Bodley Head, Ltd. v. Flegon, [1972] 1 W.L.R. 680 (Ch.); compare the analogous problem in First National Bank v. Banco Nacional de Cuba, 406 U.S. 759 (1972).

25. S. 1359, 93d Cong., 1st Sess. (1973).

that foreign official legal materials would not be protected either, so that Americans could continue freely to publish translations of Soviet legal materials. However, there has never been a court test on this subject, so that American publishers may be somewhat reluctant to proceed with such publications.

VII. CONCLUSION

Soviet-American trade in industrial and intellectual property can flourish under the existing legal structure of international treaties and national legislation, given good will in eliminating bureaucratic barriers and settlement of the few political problems involved.

Discussion

In response to a question from an American participant, Mr. Boguslavskii explained that under Soviet law, priority of registration, rather than priority of use, determined the validity of trademarks.

In response to a question from Mr. Maggs, Mr. Boguslavskii explained that Soviet jurists had not yet determined whether patent or copyright protection was appropriate for computer programs. He concluded that the tendency in the Soviet Union was to protect computer programs by copyright. He was supported in this statement by another Soviet participant, who suggested that patenting would be inappropriate unless a program exhibited technological innovation. Mr. Maggs noted that both the confusion and the emerging tendencies of Soviet law on computers appeared to parallel U.S. law, and Mr. Boguslavskii agreed.

In response to another question from the American side, Mr. Boguslavskii replied that it was a violation of Soviet law for a Soviet author to authorize foreign publication of his works except through the All-Union Copyright Service. With regard to penalties for violation of this rule, however, Mr. Boguslavskii could recall only a civil law penalty which voided such transactions. Another Soviet participant suggested that currency violations would be involved if the Soviet author were to receive royalties.

Mr. Boguslavskii and Mr. Maggs reiterated their substantial agreement on the topics under discussion. Mr. Maggs stressed that the U.S. press had presented a distortedly unfavorable view of Soviet copyright practice, and that a bill presently being considered by Congress, aimed at curing anticipated abuses by the Soviet government, was ill-advised and unnecessary. He asserted that those aspects of Soviet copyright law which would be most repugnant to Americans would, in any case, be unenforceable in the United States, either because the First Amendment would prevent enforcement or because the choice of law clause of the publishing contract would eliminate them from consideration by a court.